

Based upon this determination, and under 35 USC §121, the Examiner required that Applicants elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Thus, the Examiner requires the Applicant to elect a single invention for prosecution on the merits from one of two patentably distinct inventions believed by the Examiner to be present in the application. The Applicant hereby provisionally elects Species I, and Claims 1-9, 17-20, 23-49 and 51-74 that are readable thereon, with traverse.

The Applicant respectfully requests that Species II (Figure 4A) be combined with elected Species I (Figures 3-4) for examination purposes, and that the restriction requirement be reconsidered as it is not shown in the Office Action that a serious burden would be required to examine the pending claims of identified Species I and II, respectively, in the instant patent application. Specifically, M.P.E.P § 803 provides:

If the search and examination of an application can be made without serious burden, the Examiner *must* examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis supplied.*)

Thus, for a restriction requirement to be proper, the following two criteria must be satisfied: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden in the matter. See M.P.E.P § 803.

The Office Action has not shown that the second requirement has been met. Specifically, it has not been shown that it would be a serious burden to search and examine all of the claims of Species I and II, as identified by Applicant above, together. Alternatively, Applicants assert that even if such a burden were too great, it would certainly not be too great a burden for the Examiner to research and examine the inventions of Species I and Species II together as, though patentably distinct, the inventions described therein may reasonably be comprehended within the scope of a single art search. Consequently, reconsideration and modification or withdrawal of the restriction requirement to this extent is respectfully requested.

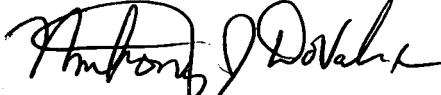
Applicants once again acknowledge with appreciation the allowance of claims 42-64 and the indication that claims 1-41 contain allowable subject matter, as stated by the Examiner in the Office Action dated July 10, 2003.

Should the Examiner have any questions regarding the Applicant's response to the Restriction Requirement, or which may advance the efficient prosecution of the application, the Examiner is courteously invited to contact the undersigned at the telephone number and address listed below.

A Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$120.00 (for large entity fee for one month extension of time) is enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

NEEDLE & ROSENBERG, P.C.

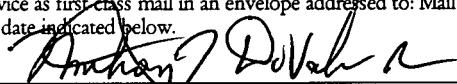


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CERTIFICATE OF MAILING

I hereby certify that this document and any documents referenced herein as being enclosed herein is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

  
Anthony J. DoVale, Jr.

10/24/2005

Date